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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,310	03/30/2004	Ehud Mendelson	REL-8149 D1	5155
24131	7590	03/07/2006	EXAMINER	
LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			LOUIS JACQUES, JACQUES H	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,310

Applicant(s)

MENDELSON ET AL.

Examiner

Jacques H. Louis-Jacques

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 13-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In the present case, the claims merely recite “a computer readable medium having program instructions.” The instructions are not being executed by a computer.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Gage et al [6,549,162].

Gage et al (6,549,162) discloses a method and apparatus for transmitting real time data from aircraft to ground stations using a data protocol over a satellite system.

Gage et al discloses a method (abstract) and computer-executable instructions (column 2, lines 57-63) for operating an aircraft early warning system. According to Gage et al, there is provided processing data transmitted on-line from an aircraft to a ground station and the data being only derived from systems on board the aircraft (column 1, lines 54-56, 63-67 and column 2, lines 1-11); displaying cockpit, aircraft, and environmental parameters (e.g., column 1); and making a change to minimize risk and prevent accidents (column 2, lines 12-25). Gage et al discloses alerting an on-board crew-member (i.e., pilot or aircrew) and optimizing workloads to minimize the risk (column 2, lines 16-21). Gage et al discloses, for example, a data analysis device 452 for extracting data containing "what-if" scenarios; querying a plurality of pre-stored events and detecting hazardous event with simulation; and assessing a risk of an aircraft operation and determining a probability of a reoccurrence of a detected event. See column 5, lines 11-16, 23-25; column 6, lines 7-18.

Gage et al discloses displaying and replaying the detected event in a three-dimensional view (column 5, lines 11-13).

Gage et al discloses identifying, evaluating and implementing alternatives for mitigating the risk (column 2, lines 19-21).

Gage et al discloses alerting ground staff (e.g., maintenance crews) if an emergency situation occurs (column 2, lines 16-19).

Gage et al discloses setting landing priorities to expedite a safe landing and sending instructions to an aircraft auto-flight system for assuming control of the aircraft or for

maneuvering the aircraft. That is, according to Gage et al, an auto-flight system may assume control of the aircraft for flight operation purposes. See column 5, lines 9-21.

Gage et al discloses transmitting aircraft data and/or voice to a secure ground storage and distribution unit for backing up information contained in aircraft black boxes (column 1, lines 63-67; column 2, lines 7-11).

Gage et al discloses distributing the data from the black boxes to at least one of an airline and federal personal for at least one of security analysis and flight operational quality assurance analysis (column 2, lines 20-25; column 5, lines 3-8).

Gage et al discloses transmitting the data using a satellite network and using a wireless IP network. See figure 4; column 3-line 56 to column 4-line 65.

Response to Amendment

5. The amendments along with the arguments filed therewith on October 3, 2005 have been entered and carefully considered by the examiner.

In particular, Applicant has amended claims 1 and 13-19, and added claims 20-21. Claims 1 and 13 have been amended to recite that the data being processed are data on-line "transmitted from an aircraft to a ground station and the data being only derived from systems on board the aircraft." Emphasis added. Claims 13-19 have been also amended to overcome the applied statutory rejection (35 USC 101).

First, let's address Applicant's arguments regarding the statutory rejection under 35 USC 101. Applicant asserted that the claims as presented are in proper form to overcome the

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applied rejection. Applicant made reference to In re Beauregard to support the appropriateness the claim form.

The examiner provides that the claims even as now amended fail to overcome the rejection under 35 USC 101 (non statutory).

Taken claim 13 as exemplary, it is recited: "A computer-readable medium having computer-executable instructions for performing a method providing aircraft early warnings, the method comprising:" The claim merely recites a "computer-readable medium having computer-executable instructions". The claim fails to recite how these instructions will be implemented or executed. It is clear that these instructions, while being on a computer-readable medium, cannot be executed by themselves. Merely having instructions on a computer-readable medium does not meet the requirements for computer-implemented inventions. The instructions must be implemented or executed by a computer. In other words, the instructions when executed by a computer cause the computer to perform the method steps.

The claims were also rejected under prior art.

Applicant argued that the Le Tallec patent used against some of the claims teaches a measuring device installed on the aircraft (response at page 12 of 21). According to Applicant, Le Tallec fails to teach data "transmitted from an aircraft to a ground station and the data being only derived from systems on board the aircraft." Applicant asserted that there is "n use of a ground station" in the Le Tallec patent (response at page 13 of 21).

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While the data are derived from systems on board of the aircraft (e.g., column 5), Le Tallec does not particularly teach a ground station as now recited in the claims (in particular independent claims 1 and 13). As such, the rejections applying the Le Tallec patent, either under 35 USC 102 or 103, have been withdrawn.

Gage et al (6,549,162) discloses a method and apparatus for transmitting real time data from aircraft to ground stations using a data protocol over a satellite system.

Gage et al discloses a method (abstract) and computer-executable instructions (column 2, lines 57-63) for operating an aircraft early warning system. According to Gage et al, there is provided processing data transmitted on-line from an aircraft to a ground station and the data being only derived from systems on board the aircraft (column 1, lines 54-56, 63-67 and column 2, lines 1-11); displaying cockpit, aircraft, and environmental parameters (e.g., column 1); and making a change to minimize risk and prevent accidents (column 2, lines 12-25). Gage et al discloses alerting an on-board crew-member (i.e., pilot or aircrew) and optimizing workloads to minimize the risk (column 2, lines 16-21).

Gage et al discloses, for example, a data analysis device 452 for extracting data containing "what-if" scenarios; querying a plurality of pre-stored events and detecting hazardous event with simulation; and assessing a risk of an aircraft operation and determining a probability of a reoccurrence of a detected event. See column 5, lines 11-16, 23-25; column 6, lines 7-18.

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Gage et al discloses transmitting aircraft data and/or voice to a secure ground storage and distribution unit for backing up information contained in aircraft black boxes (column 1, lines 63-67; column 2, lines 7-11).

Gage et al discloses distributing the data from the black boxes to at least one of an airline and federal personal for at least one of security analysis and flight operational quality assurance analysis (column 2, lines 20-25; column 5, lines 3-8).

Gage et al discloses transmitting the data using a satellite network and using a wireless IP network. See figure 4; column 3-line 56 to column 4-line 65.

Gage et al, as demonstrated above, discloses an aircraft flight control (aircraft controller) for taking over control of the aircraft for flight operation purposes. See column 5, lines 9-21. Even if one was to argue that Gage et al does not teach an “auto-flight system” or autopilot, such feature is not old in the art. In fact, as applied in the prior office action, such feature is taught by Gardner [6,526,337]. Gardner discloses a supervisory control system for aircraft light management, wherein there is provided alerting ground staff (25)

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if an emergency situation (e.g. chaotic condition) occurs setting landing priorities to expedite a safe landing, and wherein the ground staff assumes remote operation of the aircraft. See figure 1. According also to Gardner, there is provided sending instructions to an aircraft auto-flight system for assuming control of the aircraft and for maneuvering the aircraft (columns 1-2). See also columns 3-4.

It should be noted that the patent to Monroe [6,392,692] and Betters et al [6,732,027] also disclose the limitations recited in the claims of the present application.

In light of the above, the claims remain rejected and this office action is made final as necessitated by the amendments.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,545,601

Monroe

Apr. 2003

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is 571-272-6962. The examiner can normally be reached on M-Th 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 571-272-6956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacques H Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj

Jacques H. Louis-Jacques
JACQUES H. LOUIS-JACQUES
PRIMARY EXAMINER